REMARKS

Claims 1-11, 13-21, 23-25 and 27-31 are pending in this present application. Claims 1-5, 7-11, 13-21, 23-25 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Leiter, U.S. Patent No. 5,022,744, in view of Stankewitz, U.S. Patent No. 4,163,150. Claim 6 was rejected under 35 U.S.C. §103(a) as being unpatentable over Leiter in view of Stankewitz and further in view of Kerr et al., U.S. Patent App. Pub. No. 2004/0156016 A1.

The claims have now been amended. Claim 6 has been cancelled. Reconsideration of the application is respectfully requested.

Interview summary

Applicant thanks the Examiner for the consideration given during the telephone interview held with applicant's undersigned representative Erik Swanson on November 16, 2007. During the interview, the outstanding rejections under 35 U.S.C. §103(a) based on Leiter, Stankewitz and Kerr et al. were discussed. Applicant pointed out that Leiter does not maintain both the light flux and the spectral intensity distribution unchanged upon a change in numerical aperture, as recited in the independent claims. Rather, Leiter sets a desired color temperature by inserting a filter and then changes an intensity of illumination to compensate for the filter. Additionally, applicant noted that the combination with Kerr et al. would not teach or suggest the control device being configured to modify electrical power delivered to the light source, as recited in claim 6, since Leiter already opens/closes a diaphragm to change an intensity of illumination. There would be no reason to additionally modify the electrical power delivered to the light source as Kerr et al. specifically states that modifying the electrical power to the light source and varying a diaphragm are alternatives to each other. The Examiner indicating that he would favorably consider these arguments.

Rejections under 35 U.S.C. §103(a)

Claims 1-5, 7-11, 13-21, 23-25 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Leiter, U.S. Patent No. 5,022,744 in view of Stankewitz, U.S. Patent No.

4,163,150. Claim 6 was rejected under 35 U.S.C. §103(a) as being unpatentable over Leiter in view of Stankewitz and further in view of Kerr et al., U.S. Patent App. Pub. No. 2004/0156016 A1.

Independent claims 1, 19 and 28 recite changing a numerical aperture of the illuminating optical system and "concurrently control[ling] the control device [of the light source] and the spectral correction device so that, upon a change in the numerical aperture, both a light flux through the illuminating optical system and a spectral intensity distribution of light directed onto the specimen remain substantially unchanged." It is respectfully submitted that Leiter does not teach these features of claims 1, 19 and 28. Firstly, Leiter does not change the numerical aperture at all. Moreover, it is respectfully submitted that the diaphragm 25 of Leiter cannot teach both the light source and aperture device features recited in the claims. See Final Office Action dated July 24, 2007, at pages 2-3. It is respectfully submitted that an obviousness rejection founded upon such a comparison constitutes improper double inclusion. Thus Leiter does not teach both "a light source including a control device configured to control an intensity of light emitted by the light source" and "an aperture device disposed in an illumination beam path and configured to modify the numerical aperture," as recited. In contrast, Leiter system merely opens or closes a diaphragm 25 so as to change an intensity of illumination to compensate for insertion of a filter into the illumination beam path.

Nor does Leiter control the control device of the light source and the spectral correction device so that, upon a change in the numerical aperture, both the light flux through the illuminating optical system and the spectral intensity distribution remain substantially unchanged, as recited in claims 1, 19 and 28. In contrast, Leiter inserts a filter into the illumination beam path to achieve a desired color temperature, and then modifies the intensity of illumination to compensate for insertion of the filter. See Leiter, col. 3, line 49, through col. 4, line 6. Even assuming that changing the diaphragm 25 of Leiter somehow does change the numerical aperture (which, as noted above, is not the case) Leiter nowhere teaches or suggests controlling the spectral correction device nor the light source so as to maintain the spectral intensity distribution upon such a change in numerical aperture. Nor does Stankewitz teach or suggest these features. Because both Leiter and Stankewitz fail to teach or suggest all the limitations of independent claims 1, 19 and 28, a combination of these

references, to the extent proper, could not render claims 1, 19 or 28, or their respective independent claims, unpatentable.

The above differences notwithstanding, independent claim 1 has now been amended to incorporate the features of claim 6, which has now been cancelled. It is respectfully submitted that this amendment to claim 1 does not raise new issues requiring a new search, as agreed by the Examiner during the November 16th interview. Claim 1 therefore now additionally recites "wherein the control device is configured to modify electrical power delivered to the light source." It is respectfully submitted that a combination with Kerr et al. would not teach or suggest this feature. Leiter already opens/closes a diaphragm to change an intensity of illumination. See Leiter, col. 4, lines 1-6. There would be no reason to additionally modify the electrical power delivered to the light source as Kerr et al. specifically states that modifying the electrical power to the light source and varying a diaphragm are alternatives to each other. See Kerr et al., paragraph 88. Thus, Kerr et al. in fact teaches away from modify the electrical power delivered to the lamp 2 of Leiter since Leiter already varies its diaphragm 25. It is respectfully submitted that, for this additional reason, a combination of Leiter, Stankewitz and Kerr et al., to the extent proper, could not render amended claim 1 obvious.

Withdrawal of the rejection of claims 1-5, 7-11, 13-21, 23-25 and 27 under 35 U.S.C. §103(a) based on Leiter in view of Stankewitz, and of claim 6 under 35 U.S.C. §103(a) based on Leiter in view of Stankewitz and Kerr et al., is respectfully requested.

CONCLUSION

It is respectfully submitted that the application is now in condition for allowance. If there are any open issues, the Examiner is respectfully invited to contact applicant's representative at the telephone number below.

Dated: November 26, 2007

Respectfully submitted,

By _____

Erik R. Swanson
Registration No.: 40,833
DARBY & DARBY P.C.
P.O. Box 770
Church Street Station
New York, New York 10008-0770
(212) 527-7700
(212) 527-7701 (Fax)
Attorneys/Agents For Applicant